



State of Georgia

Lynnette T. Riley
Commissioner

Department of Revenue
Legal Affairs & Tax Policy
1800 Century Blvd., N.E., Suite 15107
Atlanta, Georgia 30345
(404) 417-6649

Frank M. O'Connell
Director

NOTICE SUT 2015-004

RE: Amendment of Rule 560-12-2-.64 "Energy Necessary and Integral to Manufacturing."

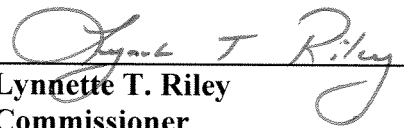
TO ALL INTERESTED PERSONS AND PARTIES:

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Rule 560-12-2-.64 "Energy Necessary and Integral to Manufacturing."

The Department of Revenue will consider the amendment of Rule 560-12-2-.64 "Energy Necessary and Integral to Manufacturing" at 10:00 a.m. on October 1, 2015 in Suite 15210 of the Department's headquarters at the below address.

The Department must receive all comments regarding the amendment of the above-referenced rule from interested persons and parties no later than 10:00 a.m. on October 1, 2015. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd. N.E., Suite 15300, Atlanta, GA 30345-3205. Electronic comments must be sent to regcomments@dor.ga.gov. Facsimile comments must be sent to (404) 417-2293. Please reference "Notice Number SUT 2015-004" on all comments.

Dated: August 26, 2015


Lynnette T. Riley
Commissioner
Georgia Department of Revenue

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE SALES AND USE TAX DIVISION

CHAPTER 560-12-2 SUBSTANTIVE RULES AND REGULATIONS

560-12-2-.64 Energy Necessary and Integral to Manufacturing.

The Georgia Department of Revenue proposes to amend Rule 560-12-2-.64 “Energy Necessary and Integral to Manufacturing” by

- Inserting the statutory definition of energy;
- Adding an example demonstrating a taxable use of energy at a manufacturing plant; and
- Adding the energy exemption created by the Transportation Funding Act of 2015 (O.C.G.A. Title 48, Chapter 8, Article 5A).

CHAPTER 560-12-2
SUBSTANTIVE RULES AND REGULATIONS

(b) "Energy" means natural or artificial gas, oil, gasoline, electricity, solid fuel, wood, waste, ice, steam, water, and other materials necessary and integral for heat, light, power, refrigeration, climate control, processing, or any other use in any phase of the manufacture of tangible personal property. The term excludes energy purchased by a manufacturer that is primarily engaged in producing electricity for resale.

31 **(3) Exemption under O.C.G.A § 48-8-3.2.**

32 **(a) Requirements.** Except as otherwise provided in this
33 paragraph, the sale and use of energy are exempt from
34 sales and use tax if the energy is:

35 1. necessary and integral to the manufacture of tangible
36 personal property and

37 2. sold, used, stored, or consumed at a manufacturing
38 plant in Georgia.

39 **(b) Energy used to produce electricity.** This exemp-
40 tion does not apply to energy purchased by a manufacturer
41 that is primarily engaged in producing electricity for
42 resale.

43 **(c) Sales and use tax for educational purposes.**
44 Energy otherwise exempt under O.C.G.A § 48-8-3.2 is not
45 exempt from the sales and use tax for educational pur-
46 poses levied pursuant to Part 2 of Article 3 of Chapter 8
47 and Article VIII, Section VI, Paragraph IV of the Consti-
48 tution or from local sales and use taxes for educational
49 purposes authorized by or pursuant to local constitutional
50 amendment.

51 **(d) Phase-in period.** Except as provided in subsections
52 (b), (c), and (e) of this paragraph, such sale and use of
53 energy qualify for a phased-in exemption in accordance
54 with the following schedule:

55 1. Transactions occurring during the 2013 calendar year
56 qualify for a 25 percent exemption.

57 2. Transactions occurring during the 2014 calendar year
58 qualify for a 50 percent exemption.

59 3. Transactions occurring during the 2015 calendar year
60 qualify for a 75 percent exemption.

61 4. Transactions occurring on or after January 1, 2016,
62 qualify for a 100 percent exemption.

63 **(e) Competitive projects of regional significance.**

64 **1. Energy necessary and integral to manufactur-**
65 **ing.** Beginning April 19, 2012, manufacturers qualifying
66 as a competitive project of regional significance are exempt
67 from all state and local sales and use tax on the sale and
68 use of energy that is necessary and integral to the manu-
69 facture of tangible personal property, except as provided in
70 subparagraphs (b) and (c). The phase-in period set forth in
71 subsection (d) does not apply.

72 **2. Energy used in construction.** In addition to the
73 exemption in O.C.G.A. § 48-8-3.2, for projects approved by
74 the Department of Economic Development during the time
75 period of January 1, 2012 through June 30, 2014~~6~~, sales of
76 energy used for and in the construction of a competitive
77 project of regional significance are exempt from all state
78 and local sales and use tax pursuant to O.C.G.A. §
79 48-8-3(93), including sales and use taxes for educational
80 purposes.

81 **(4) Exemption under the Transportation Invest-**
82 **ment Act of 2010 and the Transportation Funding**
83 **Act of 2015.**

84 **(a) Requirements.** Except as otherwise provided in this
85 paragraph, the sale and use of energy are exempt from the
86 tax imposed by the Transportation Investment Act of 2010
87 (O.C.G.A. §§ ~~48-8-240 et seq.~~ Title 48, Chapter 8, Article 5)
88 and the Transportation Funding Act of 2015 (O.C.G.A.
89 Title 48, Chapter 8, Article 5A) if the energy is:

90 **1.** necessary and integral to the manufacture of tangible
91 personal property and

92 **2.** sold, used, stored, or consumed at a manufacturing
93 plant.

94 **(b) No phase-in period.** This exemption is not subject
95 to a phase-in period.

96 **(c) Energy used to produce electricity.** This exemp-
97 tion does not apply to energy purchased by a manufacturer
98 primarily engaged in producing electricity for resale.

99 **(5) Scope of the exemptions: Necessary and inte-**
100 **gral to the manufacture of tangible personal**
101 **property.** Energy used for any purpose at a manufactur-
102 ing plant is considered necessary and integral to the
103 manufacture of tangible personal property. This includes,
104 for example, energy used:

105 **(a)** to operate machinery or equipment;

106 **(b)** to create conditions necessary for the manufacture of
107 tangible personal property;

108 **(c)** to perform an actual part of the manufacture of tan-
109 gible personal property;

110 **(d)** in administrative or other ancillary activities that
111 are located and performed at the manufacturing plant;

112 **(e)** in related operations that convey, transport, handle,
113 or store raw materials or finished goods at the manufac-
114 turing plant; and

115 **(f)** for heating, cooling, ventilation, illumination, fire
116 safety or prevention, or personal comfort and convenience
117 of the manufacturer's employees at the manufacturing
118 plant.

119 **(6) Example.** A manufacturer uses fuel gases to perform
120 repairs for unrelated parties at a Georgia manufacturing
121 plant. The fuel gas is not exempt because it is not used in

122 the manufacture of tangible personal property and,
123 therefore, does not meet the definition of “energy.”

124 **(7)(6) Certificates of Exemption.**

125 **(a)** Any person making a sale of energy that is necessary
126 and integral to the manufacture of tangible personal
127 property must collect sales and use tax unless the pur-
128 chaser furnishes the supplier with a properly completed
129 Certificate of Exemption or a direct pay permit.

130 **(b)** Where a Certificate of Exemption or direct pay per-
131 mit has not been previously obtained and submitted and
132 tax is remitted on the sale of exempt energy, the purchaser
133 may apply to the Commissioner for a refund of such tax.

134 **(8)(7) Transaction date.** For purposes of this Rule, a
135 transaction occurs on the date of purchase or, in the case of
136 energy billed on a monthly basis, on the billing date.

137 Authority: O.C.G.A. §§ 48-2-12 , 48-8-3.2 , 48-8-241,
138 48-8-269.